# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

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| In re the Marriage of<br>CHARLES A. D. CANTRELL,<br>Appellant,<br>and<br>JUSTINE LYNNETTE CANTRELL,<br>Respondent. | No. 33531-0-II<br><br>UNPUBLISHED OPINION |

Hunt, J. — Charles (Dan)[1] Cantrell appeals the parenting plan, property distribution, and attorney fee award to his former wife, Justine Cantrell, entered as part of the decree dissolving their marriage. Dan argues that (1) substantial evidence does not support the trial court's findings on parenting functions and the property division, and (2) the trial court abused its discretion in awarding attorney fees.[2] We affirm.

FACTS

I. The Marriage

Dan and Justine Cantrell married on July 25, 1998. During the marriage, they had two

[1] Throughout the record and their briefs, the parties refer to Charles Cantrell as "Dan." For clarity and to distinguish Dan Cantrell from Justine Cantrell, we continue this reference. Similarly, we refer to Justine by her first name. We intend no disrespect.

[2] Dan also assigns error to the trial court's imposition of a continuing restraining order against him in the dissolution decree. But he fails to provide any argument or citation to authority in support of this assignment of error. Accordingly, he has waived this assignment of error, and we do not further consider it. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004); RAP 10.3(a)(5).

children: K., born September 2, 1998; and A., born February 5, 2000. Justine also had an 18-year-old son, Mark Yarnall, and two other sons from a previous marriage. The Cantrells separated on December 1, 2004.

A. Parenting Functions

During the marriage, Justine primarily stayed at home with the children and provided most of the day-to-day parenting functions, such as preparing meals, doing laundry, putting the children to bed, and reading them bed-time stories. Dan worked 12 hours a day and provided the primary financial support for the family. Dan also maintained the property and building structures and cared for the family's horses. Consequently, he did not spend as much time with the children as Justine.

At trial, guardian ad litem Pat Dettling testified:

> Justine does the better job of being involved with the school, having a better routine with the kids, making sure they're clean when they go to school and they're on time, that kind of thing. And it seems like Dan does a good job taking the girls places, hiking, to the zoo, that kind of thing.

Report of Proceedings (RP) at 465. When asked, "Who do you believe can provide for the children's physical care the best? Who do you believe can feed them, provide them clothing, make sure they are physically safe," Dettling responded:

> [W]hat [K.'s] teacher has told me is that pretty consistently, when [K.] has been with her father, she comes in more tired. She's come in wearing the same clothes that she had on the day before. And -- I think she's come in late a few times. So are those huge big issues in the overall scheme? Maybe not. But I think Justine has shown that she's been able to do that for a lot of years.

RP at 469-70.

When asked who could best maintain the children's emotional stability, Dettling testified:

> I think both have something to offer. I think . . . Dan's more predictable, and I

> think the kids know what to expect. I think they know what to expect when it comes to his discipline. There isn't a lot of conflict there. But on the other hand . . . they are bonded to their mother, and we know that bonding attachment is very, very critical. And it happened at a very early age with these girls. And it happened with Justine, because she was there. I mean . . . I think sometimes we have the notion that somehow fathers are bad because, you know, the primary bonding or attachment isn't with them, but that's just what happens, because Dan was working. So he couldn't do everything.

RP at 470.

At the guardian ad litem's request, the trial court ordered Justine to undergo a psychological evaluation, which Mary Anne Trause, Ph.D., performed. Dr. Trause (1) interviewed Justine; (2) administered several personality tests; (3) found no evidence of anxiety, schizophrenic, thought, or bipolar disorders; (4) concluded that Justine "show[ed] some evidence of an affective disorder . . . probably dysthymia, which is a low-grade depression"; (5) explained that people can function with this disorder with "a little more of an effort"; and (6) diagnosed an unnamed personality disorder "showing features of . . . a dependent personality disorder, possibly a few characteristics of a narcissistic personality disorder." RP at 420-22. In addition, Dr. Trause administered two parenting indexes, the Child Abuse Potential Inventory and the Parenting Stress Index. Neither index indicated that Justine would have any problems in parenting or that she was at high risk for dysfunction.

When asked how the personality disorder would affect Justine's relationship with her children, Dr. Trause testified that (1) "however she has been with her children is how she's going to continue to be with her children," RP at 425, (2) a person with this diagnosis should be able to function with coworkers and supervisors at an adequate or more than adequate level, (3) Justine "has very high resources for coping with stress. And to me, that is a real hallmark of functioning

well in situations where there are demands that you, you know, have to cope with stress." RP at 441.

B. Exposure Incident

In February 2005, after the parties' separation, A. told Dan that she had seen "Galen's[3] bare white butt and his P, and it was all hairy." RP at 96. Dan reported the incident to the Thurston County Sheriff as indecent exposure. The detective who investigated the complaint, concluded that "it was possibly an incidental incident," and closed the case because "there wasn't enough for any probable cause to refer anybody for charges." RP at 362-63.

C. Incomes and Property

At the time of trial, Dan had been a glazier for 35 years and a union member for the preceding five years. His gross income was approximately $39,000 in 2004 and $50,000 in 2003. When he applied for a loan in August 2004, he reported his gross income as $5,004 per month.

Justine has a Bachelor of Arts (B.A.) degree and a teacher's certificate. Throughout most of the marriage, Justine did not work full time outside the home. During the 2004-2005 school year, she worked through AmeriCorps as a volunteer tutor at an elementary school, for which she received a stipend of $850 per month. At the time of trial, she was pursuing a full-time teaching position.

The parties' assets and liabilities are set forth in Findings of Fact 2.8 - 2.11. The values and character of these assets and liabilities are not in dispute. The primary community asset was the family home, valued at $247,000, secured by a mortgage with an unpaid balance of $134,000.

[3] Galen Andrews is Mark Yarnall's best friend.

Another significant asset was Dan's separate property interest in two gold claims valued at $80,000. Justine had approximately $26,000 in separate liabilities for student loans for herself and her son.

## II. Procedure

The parties petitioned for dissolution on October 15, 2004. On November 10, 2004, the trial court appointed Pat Dettling as guardian ad litem for the Cantrells' two daughters.

After a hearing on January 25, 2005, a superior court commissioner imposed a temporary parenting plan that provided Dan time with the children every other weekend and one evening during the week. Dan moved for revision. A superior court judge revised the schedule so that the children would spend four days with Dan and then four days with Justine.

Trial commenced before a different superior court judge. The trial court (1) entered Findings of Fact and Conclusions of Law, a Decree of Dissolution, and a Parenting Plan Final; (2) awarded Justine the family home and the underlying mortgage; (3) ordered Justine to pay Dan $25,000 for his community property interest in the home, secured by a deed of trust on the home to be paid at the end of the 36th month following the decree;[4] (4) named Justine as the primary residential parent for the children, with the children to reside with Dan every other weekend; (5) found that Justine had the need for payment of fees and costs and that Dan had the ability to pay the fees and costs; (6) identified $16,541.73 as Justine's reasonable attorney fees and costs; and (7) ordered Dan to reimburse Justine $4,150 in partial payment of these costs.

Dan appeals.

[4] Taking into account all separate and community assets and liabilities, the trial court awarded net valued properties of $93,486 to Dan and $35,228 to Justine.

## ANALYSIS

### I. Parenting Plan

Dan argues that the trial court abused its discretion in making Justine the primary residential parent because there is not substantial evidence to support the court's parenting findings. This argument fails.

#### A. Standard of Review

The best interests of the child is the standard "by which the court determines and allocates the parties' parental responsibilities." RCW 26.09.002. We review the trial court's rulings on residential provisions in a parenting plan for abuse of discretion. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997), *superseded by statute*, RCW 26,09.405-560, *recognized in In re Marriage of Grigsby*, 112 Wn. App. 1, 6-7, 57 P.3d 1166 (2002).

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Littlefield*, 133 Wn.2d at 46-47. A decision is manifestly unreasonable if, based on the facts and the applicable legal standard, the decision is outside the range of acceptable choices. *Id.* at 47. A decision is based on untenable grounds if the findings are not supported by the record. *Id*. Finally, a decision is based on untenable reasons if the court applies the wrong legal standard or the facts do not meet the requirements of the correct standard. *Id*.

Because of the trial court's unique opportunity to observe the parties, the appellate court should be "extremely reluctant to disturb child placement dispositions." *In re Marriage of Schneider*, 82 Wn. App. 471, 476, 918 P.2d 543 (1996), *overruled on other grounds by*

*Littlefield*, 133 Wn.2d at 57. We will not retry factual issues on appeal. Instead, we accept the trial court's findings as verities where they are supported by substantial evidence in the record. *In re Marriage of Thomas*, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991).

B. Parenting Findings and Conclusions

RCW 26.09.187(3)(a) provides a list of factors for the court to consider in determining the residential provisions of a parenting plan:

> (i) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
>
> (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
>
> (iii) Each parent's past and potential for future performance of parenting functions;
>
> (iv) The emotional needs and developmental level of the child;
>
> (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
>
> (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
>
> (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.
>
> Factor (i) shall be given the greatest weight.

RCW 26.09.004(3) defines "parenting functions" as:

> those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:
>
> (a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;
>
> (b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;
>
> (c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

> (d) Assisting the child in developing and maintaining appropriate interpersonal relationships;
>
> (e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and
>
> (f) Providing for the financial support of the child.

Justine argues that Dan failed to assign error properly to the trial court's parenting findings, as required by RAP 10.3(g).[5] Similarly, RAP 10.4(c) requires, "If a party presents an issue which requires study of a . . . finding of fact, . . . the party should type the material portions of the text out verbatim or include them by copy in the text or in an appendix to the brief."

In his Appellant's Brief, Dan assigns error to finding of fact 2.20 in general, but he does not specify which of the 35 enumerated findings therein are deficient or explain how the findings lack substantial evidentiary support. Accordingly, we treat these trial court findings as verities on appeal. *Davis v. Dep't of Labor and Indus*., 94 Wn.2d 119, 123, 615 P.2d 1279 (1980); *see also In re Habeas Corpus of Santore*, 28 Wn. App. 319, 323, 623 P.2d 702, *review denied*, 95 Wn.2d 1019 (1981) (declining to examine evidence supporting findings of fact because appellant failed to comply with RAP 10.3(g) by indiscriminately assigning error to all of the trial court's findings of fact, contending they were unsupported by substantial evidence).

The record demonstrates that Justine has developed the stronger emotional bond with the

[5] RAP 10.3(g) provides: "A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number." We note that this court, Washington Court of Appeals, Division II, has waived the requirements of RAP 10.3 (g), and an appellant's brief may use a single assignment of error to identify more than one challenged jury instruction, finding of fact, or conclusion of law. This waiver, however, does not relieve an appellant of the duty to provide verbatim text of any challenged jury instruction or finding of fact, as required by RAP 10.4(c). General Order 1998-2 *In re The Matter of Assignments of Error*.

children and that she has taken greater responsibility for parenting functions during the children's lives. *See* RCW 26.09.187(3)(a)(i). These factors weigh most heavily. Moreover, none of the other factors militate against Justine being the primary residential parent. Taking the trial court's unchallenged findings as verities on appeal, we hold that the trial court did not abuse its discretion in designating Justine the primary residential parent.

## II. Property Division

Dan next argues that the trial court abused its discretion in distributing the marital property, specifically by awarding Justine most of the equity in the family home. This argument also fails.

### A. Standard of Review

"The key to an equitable distribution of property is not mathematical preciseness, but fairness." *In re Marriage of Tower*, 55 Wn. App. 697, 700, 780 P.2d 863 (1989) (quoting *In re Marriage of Clark*, 13 Wn. App. 805, 810, 538 P.2d 145 (1975)), *review denied*, 114 Wn.2d 1002 (1990). All separate and community property is before the trial court for division between the parties in a dissolution action.

> [The trial court is not required to] divide community property equally, and it need not award separate property to its owner. According to RCW 26.09.080, the court need only "make such disposition of the property . . . either community or separate, as shall appear just and equitable after considering all relevant factors[.]"

*In re Marriage of White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001) (footnotes omitted).

A non-exclusive list of relevant factors includes:

(1) The nature and extent of the community property;
(2) The nature and extent of the separate property;
(3) The duration of the marriage; and
(4) The economic circumstances of each spouse at the time the division of

> property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time.

RCW 26.09.080. As a matter of law, no one factor is given more weight than the other relevant factors. *In re Marriage of Konzen*, 103 Wn.2d 470, 478, 693 P.2d 97, *cert. denied*, 473 U.S. 906 (1985).

A trial court has broad discretion to distribute property at dissolution. *See e.g.*, *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779 (2005). We will not substitute our judgment for that of the trial court. *See In re Marriage of Nicholson*, 17 Wn. App. 110, 119, 561 P.2d 1116 (1977). The question on appeal is not whether we believe the trial court's property division to be equitable. *In re Marriage of Monkowski*, 17 Wn. App. 816, 817, 565 P.2d 1210 (1977). Rather, our review is limited to a determination of whether the trial court manifestly abused its discretion in dividing the property. *See e.g.*, *Muhammad*, 153 Wn.2d at 803; *Monkowski*, 17 Wn. App. at 817. Such abuse of discretion occurs when a decision is manifestly unreasonable, was exercised on untenable grounds or for untenable reasons, or is one that no reasonable person would have made. *See e.g.*, *Konzen*, 103 Wn.2d at 478. We find no manifest abuse of discretion here.

B. Just and Equitable

As we discuss above, we treat the trial court's unchallenged property findings as verities on appeal. The trial court's final distribution actually awarded Dan more net assets than Justine. That much of this award was originally Dan's separate property does not make the award unreasonable because, as we previously noted, *all* property was subject to distribution by the trial

court. *See White*, 105 Wn. App. at 549.

Moreover, Dan enjoys steady employment as a union glazier. At the time of trial, Justine had acquired her teaching certificate, but she had not yet found permanent employment. Although the trial court awarded the family home to Justine, who was to be the children's primary residential parent, Justine did not receive the full value of the home as an unencumbered asset. On the contrary, the trial court assigned to Justine the home's outstanding mortgage, and it ordered her to pay Dan $25,000 for his share of the community interest in the home.

We hold that the trial court did not abuse its discretion in awarding Justine most of the equity in the home or in otherwise distributing the parties' property.

## III. Attorney Fees

### A. At Trial

Dan argues that the trial court abused its discretion in awarding Justine some of her attorney fees incurred at trial. He argues that the record demonstrates the trial court's personal bias against him. This argument lacks merit.

The trial court specifically found that Justine had the financial need for reasonable attorney fees and costs and that Dan had the ability to pay. The record reflects that Dan was in a superior financial position with regard to current employment and total net assets. Moreover, the amount the trial court awarded was only one fourth of Justine's total fees and costs.

"The trial court has broad discretion in determining whether to award attorney's fees and costs under RCW 26.09.140. In a dissolution action, the trial court's award of attorney's fees will not be reversed on appeal unless it is untenable or manifestly unreasonable." *In re Marriage*

*of Fernau*, 39 Wn. App. 695, 708, 694 P.2d 1092 (1984). We hold that the trial court's fee award was not manifestly unreasonable and that the trial court did not abuse its discretion in awarding Justine reasonable attorney fees and costs.

B. On Appeal

Justine requests attorney fees on appeal under RCW 26.09.140 and RAP 18.9(a). Under RCW 26.09.140, we have "discretion to order a party to pay the other party's attorney fees and costs associated with the appeal of a dissolution action." *In re Marriage of C.M.C.*, 87 Wn. App. 84, 89, 940 P.2d 669 (1997), *aff'd sub nom.* 136 Wn. App. 800 (1998). When exercising this discretion, we take into consideration the arguable merit of the appellate issues and the financial resources of the parties. *Id*.

Justine filed an affidavit of financial need at least 10 days before oral argument. RAP 18.1(c). Finding that she has the financial need, we grant her attorney fees on appeal, in an amount to be determined by our court commissioner.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Houghton, P.J.

Bridgewater, J.